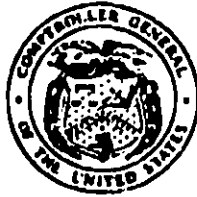


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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-168857

DATE: March 24, 1977

MATTER OF: James S. Brunton--Claim for additional travel expenses

- DIGEST:
1. Employee traveled by air carrier to temporary duty station as authorized but he purchased a vehicle and drove home. He is entitled to mileage for his return trip as provided in paras. 1-4.2 and 1-4.3 of Federal Travel Regulations not to exceed constructive cost of return trip by commercial air carrier.
 2. Employee used privately owned vehicle (POV) in lieu of Government-owned automobile for travel to temporary duty station where travel reimbursement was limited to cost of travel on common carrier. Employee is entitled to mileage only as provided in para. 1-4.4b of Federal Travel Regulations since use of POV was not determined advantageous to Government.
 3. Employee claimed lodging for 3 nights at motel and 1 night with relatives in determining per diem for actual travel costs but he claimed lodging for 4 nights at motel for constructive cost of per diem under para. 1-4.3 of Federal Travel Regulations resulting in higher average for per diem under constructive method. Absent explanation from employee we accept agency determination that constructive per diem be based upon lodging costs for 3 nights.

This action is in response to the request for an advance decision from Joseph R. Ruland, Certifying Officer, Federal Highway Administration, Region Eight, U.S. Department of Transportation, reference 08-00.11, concerning payment of two reclaim vouchers for additional travel expenses submitted by Mr. James S. Brunton, an employee of the Federal Highway Administration stationed in Helena, Montana.

The first voucher claims certain travel expenses administratively denied in connection with Mr. Brunton's travel to Oklahoma City, Oklahoma. Although he was only authorized travel by air common carrier, Mr. Brunton chose to purchase a vehicle in Oklahoma City and drive back to his duty station during his scheduled travel time and an off-duty weekend. Mr. Brunton turned in his unused return travel airline ticket in the amount of \$109.72 and claimed mileage for 1,412 miles at 7 cents per mile, or \$98.84. He now requests payment for his mileage at 15 cents per mile (\$211.80) but with the cost not to exceed the cost of the air travel (\$109.72). Under the provisions of the Federal Travel Regulations (FTR), paras. 1-4.2 and 1-4.3 (FFMR 101-7), as amended by Temporary Regulation A-11, May 19, 1975, Mr. Brunton would be entitled to mileage at the rate of 15 cents per mile not to exceed the constructive cost of transportation by commercial air carrier. The submission from the certifying officer states that this claim has been paid, but there is no evidence in the record before us to that effect. Therefore, Mr. Brunton's voucher for the difference between the mileage already paid (\$98.84) and the constructive cost of travel by air carrier (\$109.72) may be certified for payment if payment has not already been made.

Mr. Brunton has submitted a second voucher for additional travel expenses in connection with his travel to Denver, Colorado, for a staff conference. Mr. Brunton was authorized to travel to Denver by privately owned conveyance in lieu of an available Government vehicle at a rate of 11 cents per mile, not to exceed the cost of transportation by common carrier. He claimed actual expenses of 4-1/2 days per diem at \$27 per day (\$121.50) and mileage for 1,705 miles at 15 cents per mile (\$255.75) while he computed the constructive cost of common carrier transportation (\$160.95) and per diem (4-1/2 days at \$31 per day or \$139.50) for a total constructive cost of \$300.45. The agency has determined that Mr. Brunton should receive 11 cents per mile for actual mileage (\$187.55) and actual per diem (\$121.50), not to exceed the constructive cost of transportation (\$160.95) and per diem (\$114.75) or \$275.70. Mr. Brunton disagrees with the rate of 11 cents per mile for mileage and he cites paragraph 1-4.3 of the FTR and a decision of our Office, B-181151, January 3, 1975, in support of his claim for 15 cents per mile.

Under para. 1-2.2d of the FTR, an employee who uses a privately owned vehicle as a matter of personal preference when such use is not determined to be advantageous to the Government shall be reimbursed in accordance with the provisions of chapter 1, part 4 of

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the Federal Travel Regulations. Paragraph 1-4.3 of the FTR provides, in pertinent part:

"When use of privately owned conveyance is in lieu of common carrier transportation. Whenever a privately owned conveyance is used for official purposes as a matter of personal preference in lieu of common carrier transportation under 1-2.2d, payment for such travel shall be made on the basis of the actual travel performed, computed under 1-4.1 at the mileage rate prescribed in 1-4.2a plus the per diem allowable for the actual travel. The total allowable shall be limited to the total constructive cost of appropriate common carrier transportation including constructive per diem by that method of transportation. * * *"

Paragraph 1-4.2a of the FTR sets forth mileage rates when use of the privately owned conveyance is advantageous to the Government. However, since Mr. Brunton used his own vehicle in lieu of a Government-furnished automobile, mileage must be based on the rate as set forth in para. 1-4.4b of the FTR of 11 cents per mile. This determination is compatible with our decision in B-181151, supra, where we held an employee must be reimbursed his mileage where use of his privately owned automobile was not authorized and was in fact discouraged due to energy conservation but such reimbursement would be limited to the constructive costs of travel by common carrier.

Finally, Mr. Brunton takes exception to the agency's determination of his constructive per diem citing a decision of our Office, 55 Comp. Gen. 192 (1975). We note that for actual per diem Mr. Brunton claimed lodging for 3 nights at a motel at \$16.13 per day and lodging for the remaining night with relatives at no cost to the Government for an average of \$13 per night for lodging or \$27 per diem (including \$14 for meals and miscellaneous expenses). However, for constructive per diem Mr. Brunton claimed lodging for 4 nights at \$16.13 per day for an average of \$17 per night or \$31 per diem (including meals and miscellaneous expenses). Since there is no explanation as to why Mr. Brunton claims he would have used motel accommodations on the fourth night instead of staying with relatives had he utilized common carrier, we must accept the agency determination that his constructive per diem be limited to \$27. Similarly, we accept the agency's

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determination that Mr. Brunton's constructive per diem be limited to 4-1/4 days. With regard to Mr. Brunton's reliance upon our decision in 55 Comp. Gen. 192, supra, that decision is held under para. 1-4.3 of the FTR entitlement must be based on the total actual travel costs limited to the total constructive travel costs without comparing travel costs and per diem separately. The agency's action on this voucher and our determination are consistent with our holding in 55 id. 192, supra. Mr. Brunton's voucher for additional travel expenses under these circumstances may not be paid.

Accordingly, action on the vouchers should be taken in accordance with the above discussion.

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Deputy Comptroller General
of the United States